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August 15, 2005

BY ECFS

Marlene H. Dortch, Esq.
Secretary
Federal Communications Commission
Washington, D.C. 20554

**Re: KTXS-DT, Sweetwater, Texas (Facility ID No. 308)
Form 383 First Round Channel Election Conflict Decision
FCC File No. BFRCCCT-20050815ADI
MB Docket No. 03-15
Request for Waiver of the 0.1 Percent Interference
Limitation**

Dear Ms. Dortch:

BlueStone License Holdings Inc. ("BlueStone"), licensee of NTSC television station KTXS-TV and permittee of digital television station KTXS-DT, both Sweetwater, Texas, by its attorneys, hereby requests a waiver of the 0.1 percent interference limitation set out in the letter to BlueStone dated June 7, 2005, from Clay C. Pendarvis, Associate Chief, Video Division, Media Bureau (the "June 7 Letter"), as amplified in the *Public Notice*, "DTV Channel Election: First Round Conflict Decision Extension and Guidelines for Interference Conflict Analysis," DA 05-2233 (Aug. 2, 2005). Specifically, BlueStone requests that it be permitted to maintain its election of KTXS-TV's NTSC channel 12 for KTXS-DT's post-transition digital operation, notwithstanding the Commission's analysis indicating that KTXS-DT's authorized facilities operating on channel 12 are predicted to result in interference to 0.8 percent of the service area population of Nexstar Broadcasting, Inc.'s ("Nexstar") digital television station KLST-DT, San Angelo, Texas (Facility ID No. 31114). Alternatively, in order to preserve its rights and subject to this request, in a Digital Channel Election First Round Conflict Decision on FCC Form 383 being filed concurrently herewith BlueStone has provisionally notified the Commission of its decision to change its election for final digital operation to its currently assigned in-core DTV channel 20.

KTXS-TV is licensed to operate on NTSC channel 12 and KTXS-DT has been assigned DTV channel 20. In its Digital Channel Election First Round Election on FCC Form 382 filed on February 9, 2005 (FCC File No. BFRECT-20050209AIN), BlueStone elected KTXS-TV's NTSC channel 12 for KTXS-DT's post-transition digital operations. In its Digital Channel Election First Round Election on FCC Form 382 filed on February 9, 2005 (FCC File No. BFRECT-20050209AQQ), Nexstar elected its assigned DTV channel 11 for KLST-DT's post-transition digital operations.

In the June 7 Letter, the Commission notified BlueStone of the existence of an apparent "conflict" between the post-transition digital channel elections of KTXS-DT and KLST-DT. According to the Commission's analysis, KTXS-DT's proposed digital operation on its elected NTSC Channel 12 is predicted to result in interference to 0.8 percent of the service area population of KLST-DT's authorized facilities on its elected NTSC Channel 11. Notwithstanding the *de minimis* extent of the interference that theoretically would result from KTXS-DT's post-transition operation on Channel 12, BlueStone and Nexstar have been unable to conclude an agreement pursuant to which Nexstar would agree to accept the interference.

BlueStone submits that the public interest would be served by grant of a waiver of the 0.1 percent interference limitation. As explained in the attached Engineering Statement of Jules Cohen, P.E., the entire population calculated even potentially to receive interference to KLST-DT on channel 11 from KTXS-DT on channel 12 resides in KTXS-DT's home Abilene-Sweetwater DMA; indeed, *no interference is calculated to occur to any viewers situated within the San Angelo DMA, to which KLST-DT is assigned*. Furthermore, even assuming that the predicted interference actually were to occur, the total interference from all stations, including the proposed KTXS-DT operation on channel 12, amounts to a population of 5,812, only 3.5 percent of the population of 166,392 not affected by terrain losses, well short of the 10 percent permitted maximum. In addition, those areas calculated to receive interference from KTXS-DT will continue to be served by the five stations in the Abilene-Sweetwater DMA.

Furthermore, in making its channel election, BlueStone determined that KTXS-DT will be able to provide superior service post-transition, at lower cost, on channel 12 than on its assigned DTV channel 20. BlueStone has determined, for example, that the incremental capital expense associated with the build-out of its permanent digital facilities on channel 20 instead of its elected channel 12 will be

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approximately \$500,000. Meanwhile, BlueStone estimates that the cost of power needed to operate a permanent digital facility on channel 20 will exceed the channel 12 power costs by approximately \$30,000 per year. Particularly in view of BlueStone's good-faith election of channel 12 for KTXS-DT's post transition operation, neither of these significant expenditures could reasonably have been anticipated.

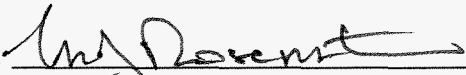
Finally, BlueStone notes that an application to change the digital television allotment table substituting channel 12 for channel 20 at Sweetwater would comply with FCC rules in that no station would receive interference in excess of two percent of its population served and not affected by terrain losses. The apparently *ad hoc* criterion of no interference in excess of 0.1 percent that has been employed in the analysis reflected in the June 7 Letter is inconsistent with the means available for predicting service and interference. The tools employed (Longley-Rice Irregular Terrain Model or any other prediction method) lack the precision to make interference determinations of as little as 0.1 percent. The criterion of two percent, as employed in the rules, is far more realistic.

Grant of the limited relief requested would promote the public interest in the wide dissemination of digital broadcast television service; at the same time, there is no basis to conclude that grant of a limited waiver would result in any harm to KLST-DT's private business interests. Accordingly, for all the reasons discussed herein, BlueStone respectfully requests that the Commission waive the 0.1 percent interference limitation and approve KTXS-DT's election of channel 12 for post-transition digital operations.

Please direct any questions regarding this matter to the undersigned.

Respectfully submitted,

HOGAN & HARTSON L.L.P.

By: 
Mace J. Rosenstein

Attorneys for BlueStone License Holdings
Inc.

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Elizabeth Hammond, Esq. (counsel for Nexstar Broadcasting, Inc.)

**ENGINEERING STATEMENT ON BEHALF OF
BLUESTONE LICENSE HOLDINGS INC.
KTXS-TV, SWEETWATER, TEXAS**

This engineering statement, prepared on behalf of Bluestone License Holdings Inc. ("Bluestone"), licensee of KTXS-TV, channel 12, Sweetwater, Texas, is submitted in support of the Bluestone Request for Waiver of the 0.1 Percent Interference Limitation.

In the Commission's June 7, 2005, letter relative to the First Round Channel Election Application by Bluestone proposing digital operation on channel 12, Bluestone was advised that such digital operation would cause 0.8 percent interference to elected use of channel 11 for digital operation of KLST.

An independent analysis by the undersigned confirms that interference to KLST-DT on channel 11 from KTXS-DT on channel 12 is calculated to exist. However, it was determined further that the entire population calculated to receive interference resides in the Abilene-Sweetwater DMA. One cell, straddling the Coke/Nolan County border, has calculated interference but that cell (no. 9721) contains no population. Coke County is in the San Angelo DMA. Nolan County is in the Abilene-Sweetwater DMA. Furthermore, the total interference from all other stations, including the proposed KTXS-DT operation on channel 12, amounts to a population of 5,812, only 3.5 percent of the population of 166,392 not affected by terrain losses, well short of the 10 percent permitted maximum.

Those areas calculated to receive interference from KTXS-DT are provided with coverage by the five stations in the Abilene-Sweetwater DMA.

JULES COHEN, P.E.
Consulting Engineer

Those areas calculated to receive interference from KTXS-DT are provided with coverage by the five stations in the Abilene-Sweetwater DMA.

Interference analysis results reported above were determined by use of the program known as "tv-process." In that program, the area within the predicted noise-limited contour is divided into uniform cells, and both the desired and undesired signal strengths at the center of each cell are calculated by use of the Longley-Rice Irregular Terrain Model.



Jules Cohen, P.E.

August 12, 2005

